

months due to a retroactive amendment of U.S.S.G. § 2D1.1, reducing his total sentence to 352 months.

Petitioner and eight other co-defendants appealed their convictions, alleging inter alia that the sentencing court applied the 1992 version of U.S.S.G. § 1B1.3 instead of the 1993 version, and held them accountable for too much cocaine. On October 26, 1995, the Eleventh Circuit . . . affirmed petitioner's sentence . . .

(CV596-60, Doc. No. 12, pp. 1-4) (citations omitted). Petitioner asserted that his sentence should have been vacated because his predicament was similar to that of his co-appellants, who were successful on appeal. (Id). After considering various supplemental pleadings, the Court denied Cooper's § 2255 motion. (Id. at Doc. Nos. 12, 15). Cooper now has filed this instant successive 28 U.S.C. §2255 motion claiming that the "district court was lack [sic] jurisdiction to impose a sentence for an offense not charged in the indictment..." (Doc. No. 1, p. 7).

DISCUSSION AND CITATION TO AUTHORITY

To file a second or successive § 2255 motion, the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") requires the movant to first file an application with the appropriate court of appeals for an order authorizing the district court to consider the motion. 28 U.S.C. § 2244(b)(3)(A); Farris v. United States, 333 F.3d 1211, 1216 (11th Cir. 2003). A panel of the court of appeals must certify that the second or successive motion contains:

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h); In re Anderson, 396 F.3d 1336, 1337 (11th Cir. 2005). Without authorization from the court of appeals, a district court lacks jurisdiction to consider a petitioner's second or successive motion. Farris, 333 F.3d at 1216 (citing Hill v. Hopper, 112 F.3d 1088, 1089 (11th Cir. 1997)).

This Court lacks jurisdiction to consider Petitioner's motion, as Petitioner has presented no evidence that he has obtained permission from the Eleventh Circuit to file this successive § 2255 motion.

CONCLUSION

Based on the foregoing, it is my **RECOMMENDATION** that Petitioner's motion to set aside, vacate, or correct his sentence, brought pursuant to 28 U.S.C. § 2255, be **DISMISSED**.

SO REPORTED and **RECOMMENDED**, this 2nd day of February, 2010.



JAMES E. GRAHAM
UNITED STATES MAGISTRATE JUDGE